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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,638	08/13/2001	Hiromichi Takada	212412US-2DIV	7996

22850 7590 05/22/2003

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

SILBERMANN, JOANNE

ART UNIT	PAPER NUMBER
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3611

/0

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

927638

Applicant(s)

Takada et al.

Examiner

Silbermann

Group Art Unit

3611

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 4-14-03.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 5-8 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 5-8 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☒ The ~~proposed~~ drawing correction, filed on 4-14-03 is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

## **DETAILED ACTION**

### ***Specification***

The substitute Specification is proper and has been entered.

### ***Drawings***

1. The drawing correction and/or the proposed substitute sheets of drawings, filed on April 14, 2003 have been approved.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons, US #5,788,076.
4. Simmons teaches data code 70' (or 10') affixed to a package of fluid goods (Figure 1). Simmons does not specifically teach what information is included in the code, however, the particular indicia included on a label is considered to be entirely a matter of design choice. It would have been obvious to a person having ordinary skill in the art to place whatever indicia necessary on such a data label. Also, where the sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed.

Art Unit: 3611

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Doyle, UK application #2,240,205.

6. Simmons does not teach a can having paint inside, however, this is old and well known in the art. Doyle teaches a can of paint having labels on the outside thereof. It would have been obvious to apply a code label, as in Simmons, to the can of Doyle to provide information thereon.

7. The examiner also takes official notice of paint cans for sale with bar codes affixed to the outside thereof.

### ***Response to Arguments***

8. Applicant's arguments filed April 14, 2003 have been fully considered but they are not persuasive.

9. Applicants argue that the data code shown in Simmons includes the specific data of the code of the instant invention, particularly, data that instructs manufacturing and handling operations. As discussed in the above rejection, where the sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed. It appears that the only difference between the instant invention and Simmons is the type of data included in the code. This does not provide a new physical structure or a new relationship between the printed matter and the structure.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


Art Unit: 3611

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joanne Silbermann whose telephone number is 703-308-2091. The examiner can normally be reached on Tu-Th 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Joanne Silbermann  
Primary Examiner  
Art Unit 3611

js  
May 21, 2003